



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on July 6, 2005

Date of Meeting: October 4, 2004

The Mayor and Council of the City of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 West Alameda Street, Tucson Arizona, at 5:37 p.m. on Monday, October 4, 2004, all members having been notified of the time and place thereof.

1. **ROLL CALL**

The meeting was called to order by Vice Mayor Ronstadt, Mayor Pro Tempore, and upon roll call, those present and absent were:

Present:

José J. Ibarra	Council Member Ward 1
Carol W. West	Council Member Ward 2
Kathleen Dunbar	Council Member Ward 3
Shirley C. Scott	Council Member Ward 4
Fred Ronstadt	Vice Mayor, Council Member Ward 6

Absent/Excused:

Steve Leal	Council Member Ward 5
Robert E. Walkup	Mayor

Staff Members Present:

James Keene	City Manager
Michael Rankin	City Attorney
Kathleen S. Detrick	City Clerk
Michael D. Letcher	Deputy City Manager

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Pastor Mark Pederson, Centro Cristiano Esperanza, after which the pledge of allegiance was presented by the entire assembly.

Kathleen S. Detrick, City Clerk, announced that the Public Hearing for Item 8; Proposed Diamond Bell Isolated Water System Fee would not be held. Any member of the audience wishing to address the Mayor and Council regarding this item could do so during Item 7: Call to the Audience. Also, because there were not enough Council Members present to pass the Emergency Clause, Consent Agenda Items “B, C, D, E, F, G, H, J and K” would be brought back next week for the purpose of passing the Emergency Clause.

Presentation:

- a. Mayor Pro Tempore Ronstadt proclaimed October to be National Down Syndrome Awareness Month.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Pro Tempore Ronstadt announced City Manager’s communication number 536, dated October 4, 2004, would be received into and made a part of the record. He also announced this was the time scheduled to allow members of the Mayor and Council to report on current events and asked if there were any reports.

- a. Council Member West invited the audience to attend the tour of the Los Reales Landfill and the Recycling Center on October 23, 2004. She also announced on October 29, 2004, Ward 2 would host a conference for mature women on “Positive Aging.”
- b. Mayor Pro Tempore Ronstadt introduced a book, “Greetings from Tucson – Postcards from Tucson” which is authored by City of Tucson Library employee, Michelle Graye.

4. CITY MANAGER’S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Pro Tempore Ronstadt announced City Manager’s communication number 537, dated October 4, 2004, would be received into and made a part of the record. He asked for the City Manager’s report.

James Keene, City Manager, reported:

- a. October 8, 2004 would mark the kick off of a new Tucson Municipal Court enforcement tool. The Traffic Ticket Enforcement Assistance Program (TTEAP) would halt vehicle registration renewal when there is greater than two hundred

dollars in outstanding court obligations, or where there is a failure to appear on a criminal traffic citation.

- b. October 9, 2004 would be Sun Tran's "Tucson in Motion – Free Ride Day."
- c. The new "Little Poca Cosa" was re-opening for breakfast and lunch at their new location, 151 N. Stone.

5. LIQUOR LICENSE APPLICATIONS

Mayor Pro Tempore Ronstadt announced City Manager's communication number 535, dated October 4, 2004, would be received into and made a part of the record. He asked the City Clerk to read the Liquor License Agenda.

b. New Licenses

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| 1. | Wingstop
2500 N. Silverbell Road
Applicant: Sheryl A. Hill
City 055-04, Ward 1
Series 12
Action must be taken by: October 8, 2004 | Staff Recommendation

Police: In Compliance
DSD: In Compliance
Revenue: In Compliance |
| 2. | Pizzeria Laferlita
446 N. Campbell Avenue #1101
Applicant: Thomas R. Aguilera
City 057-04, Ward 6
Series 12
Action must be taken by: October 15, 2004 | Staff Recommendation

Police: In Compliance
DSD: In Compliance
Revenue: In Compliance |
| 3. | Best Western Inn At The Airport
7060 S. Tucson Blvd.
Applicant: Scott S. Zachary
City 058-04, Ward 5
Series 11
Action must be taken by: October 17, 2004 | Staff Recommendation
Police: In Compliance
DSD: In Compliance
Revenue: In Compliance |

c. Special Events

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| 1. | Tucson Lesbian & Gay
Alliance Inc. Dba Tucson Pride Inc.
900 S. Randolph Way
Applicant: Robert S. Bowers
City T078-04, Ward 6
Date of Event: October 9, 2004
(Outoberfest - Annual GLBT Pride Festival) | Staff Recommendation

Police: In Compliance
DSD: In Compliance
Parks: In Compliance |
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| 2. | St. Cyrils Of Alexandria
Catholic Church & School
4725 E. Pima Street
Applicant: Daren W. Lowry
City T079-04, Ward 6
Date of Event: October 14, 2004
October 15, 2004
October 16, 2004
October 17, 2004
(Church & School Fundraiser) | Staff Recommendation

Police: In Compliance
DSD: In Compliance |
| 3. | Saints Peter And Paul
Catholic Church And School
1436 N. Campbell Avenue
Applicant: Paul V. Leonardi
City T080-04, Ward 6
Date of Event: October 16, 2004
(School Fundraiser)
Public Opinion: Protest Filed
Considered separately | Staff Recommendation

Police: In Compliance
DSD: In Compliance |
| 4. | Sacred Heart Church
601 E. Ft. Lowell Road
Applicant: Mercedes G. Saenz
City T081-04, Ward 3
Date of Event: October 16, 2004
(Fundraiser/Community Event) | Staff Recommendation

Police: In Compliance
DSD: In Compliance |
| 5. | Tucson Medical Center Foundation
3645 W. Starr Pass
Applicant: Colleen H. Cullison
City T082-04, Ward 1
Date of Event: October 16, 2004
(Fundraiser for Children's Miracle Network at TMC) | Staff Recommendation
Police: In Compliance
DSD: In Compliance |
| 6. | Kokopelli Winery
536 N. 4th Avenue
Applicant: Dennis M. Minchella
City T083-04, Ward 6
Date of Event: December 10, 2004
December 11, 2004
December 12, 2004
(4th Avenue Festival) | Staff Recommendation

Police: In Compliance
DSD: In Compliance |

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| 7. | St. Ambrose School
300 S. Tucson Blvd.
Applicant: Leslie A. Shultz-Crist
City T084-04, Ward 6
Date of Event: December 16, 2004
December 17, 2004
(Fundraiser)
Public Opinion: Protest Filed
Considered separately | Staff Recommendation

Police: In Compliance
DSD: In Compliance |
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It was moved by Council Member West, duly seconded, and passed by a voice vote of 5 to 0 (Mayor Walkup and Council Member Leal absent/excused), that liquor license applications 5b1 through 5b3, and 5c1, 5c2, and 5c4 through 5c6, be forwarded to the Arizona State Liquor Board with a recommendation for approval.

5. LIQUOR LICENSE APPLICATIONS

c. Special Events

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| 3. | Saints Peter And Paul
Catholic Church And School
1436 N. Campbell Avenue
Applicant: Paul V. Leonardi
City T080-04, Ward 6
Date of Event: October 16, 2004
(School Fundraiser)
Public Opinion: Protest Filed | Staff Recommendation

Police: In Compliance
DSD: In Compliance |
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Kathleen S. Detrick, City Clerk, announced the first special event license to be considered separately was Item 5c3 Saints Peter and Paul Catholic Church and School. It is located in Ward 6.

Mayor Pro Tempore Ronstadt asked if the protestor was present. No one came forward.

It was moved by Council Member Ibarra, duly seconded, and passed by a voice vote of 5 to 0 (Mayor Walkup and Council Member Leal absent/excused), that liquor license application 5c3 be forwarded to the Arizona State Liquor Board with a recommendation for approval.

5. LIQUOR LICENSE APPLICATIONS

c. Special Events

7.	ST. AMBROSE SCHOOL 300 S. Tucson Blvd. Applicant: Leslie A. Shultz-Crist City T084-04, Ward 6 Date of Event: December 16, 2004 December 17, 2004 (Fundraiser) Public Opinion: Protest Filed	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance
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Kathleen S. Detrick, City Clerk, announced the last special event license to be considered separately was Item 5c7 St. Ambrose School. It is located in Ward 6.

Mayor Pro Tempore Ronstadt asked if the protestor was present. No one came forward.

It was moved by Council Member Ibarra, duly seconded, and passed by a voice vote of 5 to 0 (Mayor Walkup and Council Member Leal absent/excused), that liquor license application 5c7 be forwarded to the Arizona State Liquor Board with a recommendation for approval.

6. CONSENT AGENDA ITEMS A THROUGH K

Mayor Pro Tempore Ronstadt announced that the reports and recommendations from the City Manager on the Consent Agenda Items would be received into and made a part of the record. He asked the City Clerk to read the Consent Agenda.

A. FINAL PLAT: (S04-046) LEE TERRACE SUBDIVISION, LOTS 1 TO 3 (ACCESS/UTILITY EASEMENT)

1. Report from City Manager OCT4-04-539 W6
2. The City Manager recommends that the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.

B. TUCSON CODE: AMENDING (CHAPTER 22) REQUIRING TUCSON SUPPLEMENTAL RETIREMENT SYSTEM MANDATORY MEMBERSHIP FOR PERMANENT FULL-TIME EMPLOYEES ONLY

1. Report from City Manager OCT4-04-540 CITY-WIDE

2. Ordinance No. 10047 relating to Pensions, Retirement and Group Insurance; amending the Tucson Code, Chapter 22, Pensions, Retirement and Group Insurance, Article III, Tucson Supplemental Retirement System, Division 1, Types of Retirement and Benefits, Section 22-34 Membership; and declaring an emergency.

Kathleen S. Detrick, City Clerk, announced a correction to Ordinance 10047. The effective date should be listed as October 11, 2004 instead of October 4, 2004.

C. REAL PROPERTY: APPROVING LEASE AGREEMENTS WITH SAGE CASHMERE, LTD., AND SAGUARO ARTISANS FOR PORTIONS OF THE HISTORIC DEPOT

1. Report from City Manager OCT4-04-541 W6
2. Ordinance No. 10048 relating to real property; authorizing and approving the lease of Suite 201 of 400 North Toole Avenue to Sage Cashmere, LTD., a New Mexico S-Corporation and portions of 410 North Toole Avenue to Francis Lemer, Kristin D'Oca, Mike D'Oca, Jerry Harkins, and Ruth Denholtz doing business as Saguaro Artisans; and declaring an emergency.

D. REAL PROPERTY: LEASE AGREEMENT WITH GLORIA J. GILLESPIE FOR A PARKING AREA AT 3306 NORTH FIRST AVENUE

1. Report from City Manager OCT4-04-544 W3
2. Ordinance No. 10050 relating to real property; authorizing and approving the least of certain city-owned real property located at North First Avenue and Navajo Road as a parking area for Boondocks Lounge; and declaring an emergency.

E. REAL PROPERTY: VACATION AND SALE OF PENNINGTON STREET RIGHT-OF-WAY TO PIMA COUNTY

1. Report from City Manager OCT4-04-542 W1
2. Ordinance No. 10052 relating to real property; vacating and declaring a portion of Pennington Street right-of-way to be surplus property, and authorizing the sale thereof to Pima County; and declaring an emergency.

F. REAL PROPERTY: RATIFICATION OF A DECLARATION OF ACCESS EASEMENTS AND RESTRICTIONS, FOR REDEVELOPMENT OF PROPERTY LOCATED AT 3832 EAST SPEEDWAY

1. Report from City Manager OCT4-04-545 W6

2. Ordinance No. 10055 relating to real property; authorizing and approving the ratification of a Declaration of Access Easements and Restrictions for certain City owned real property in the vicinity of Speedway Boulevard and Alvernon Way; and declaring an emergency.
- G. REAL PROPERTY: APPROVING AN AGREEMENT WITH COMPASS BANK FOR TEMPORARY USE OF PROPERTY
1. Report from City Manager OCT4-04-543 W6
 2. Ordinance No. 10049 relating to real property; authorizing the execution of a license and indemnification agreement for temporary use of certain real property in the vicinity of the southeast corner of Grosetta Avenue and Council Street from Compass Bank; and declaring an emergency.
- H. ASSURANCE AGREEMENT: (S03-029) VISTA MONTANA ESTATES PHASE I SUBDIVISION, LOTS 1 TO 215 AND COMMON AREAS “A”, “C”, “D” AND “E”
1. Report from City Manager OCT4-04-548 W4
 2. Resolution No. 19947 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S03-029 of a final plat for the Vista Montana Estates, Phase One Subdivision, Lots 1 to 215 and Common Areas “A”, and “C” – “E”; and declaring an emergency.
- I. FINAL PLAT: (S03-029) VISTA MONTANA ESTATES PHASE I SUBDIVISION, LOTS 1 TO 215 AND COMMON AREAS “A”, “C”, “D” AND “E”
1. Report from City Manager OCT4-04-549 W4
 2. The City Manager recommends that, after the approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- J. REAL PROPERTY: RENAMING THE “TRADING POST BLOCK” TO KOLBE SQUARE
1. Report from City Manager OCT4-04-551 W6

2. Resolution No. 19948 relating to real property; renaming the Trading Post Block between Scott Avenue, Stone Avenue, Congress Street and Broadway Boulevard as Kolbe Square; and declaring an emergency.
- K. REAL PROPERTY: RENAMING THE EAST PLAZA OF THE HISTORIC DEPOT TO PASTOR PLAZA
1. Report from City Manager OCT4-04-533 W6
 2. Resolution No. 19949 relating to real property; renaming the East Plaza of the Historic Depot located on Toole Avenue to Pastor Plaza; and declaring an emergency.

It was moved by Council Member West, duly seconded, that Consent Agenda Items A through K, noting all items except for A and I would be brought back next week for adoption with the Emergency Clause, be passed and adopted and the proper action taken.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, and Scott;
Mayor Pro Tempore Ronstadt

Nay: None

Absent/Excused Council Member Leal and Mayor Walkup

Consent agenda Items A through K, were declared passed and adopted by a roll call vote of 5 to 0.

7. CALL TO THE AUDIENCE

Mayor Pro Tempore Ronstadt announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for items scheduled for a public hearing. Speakers would be limited to three-minute presentations.

- a. Michael Toney commented on the situation in Iraq.
- b. Tig Collins asked for the Mayor and Council's support of the Community Arts Center.
- c. Jim Smith invited everyone to "Hopefest" to be held October 23, 2004 at the Tucson Convention Center.
- d. Ken MacFarlane spoke regarding "National Get Involved Day" which was October 23, 2004. He said twenty-seven churches and over one thousand

volunteers would partner to make improvements to schools in the Tucson community

8. PUBLIC HEARING: PROPOSED DIAMOND BELL ISOLATED WATER SYSTEM FEE

Kathleen S. Detrick, City Clerk, stated the public hearing would not be held as the Water Department had withdrawn their request for a Diamond Bell Isolated Water System Fee.

9. PUBLIC HEARING: ZONING (C9-98-25) STARR PASS BOULEVARD SR TO C-1, REQUEST FOR TIME EXTENSION (CONTINUED FROM MEETING OF SEPTEMBER 27, 2004)

Mayor Pro Tempore Ronstadt announced that City Manager's communication number 550, dated October 4, 2004, would be received into and made a part of the record. He also announced this was a public hearing on a request for a five year time extension for property located south of Starr Pass Boulevard and west of Players Club Road. The original five-year authorization would expire November 8, 2004.

Council Member Ibarra requested that one or two of the residents be allowed to speak regarding their discussions with the developer.

Steve Weatherspoon, said that he was one of three representatives of the Sub Home Owners Association to the Master Homeowners Board of Directors at Starr Pass. He was there to present the position of the Sub Home Owners Association (SubHOA) to the extent it had been developed. They had only learned of the public hearing ten days ago and several people were out of town and they had been unable to contact everyone. He wanted to give the Mayor and Council an idea of what was going on. This had nothing to do with the Marriott resort that was being constructed, it was regarding the proposed Marriott timeshare units that came before the Mayor and Council in 1999 and were approved for a reduced number of timeshares. He had one specific comment on the City Manager's report and the conditions; item 1A3 provided for up to two hundred fifty Marriott timeshare casitas on thirty-two and a half acres, which was the agreement that was reached with the homeowners. Item 2A however, which talks about submitting development plans in accordance with the *Land Use Code*, stated that the total number of units should be limited to three hundred eighty-two as indicated in the traffic study. He was not sure if that was a typographical error, but they would like it corrected to reflect the two hundred fifty.

Ernie Duarte, Development Services Director, stated that it was a typographical error and the correct number was two hundred fifty units not three hundred eighty-two.

Mr. Weatherspoon said at the time the original proposal was made in 1989, it was for four hundred seventy-eight timeshare units. The residents of Starr Pass were not enthused. Out of the three hundred eighty residences in existence then, two hundred sixty-seven owners signed a petition in opposition to the proposal, which included the

Mayor. Those were submitted to the City and at the behest of the Mayor and Council, the homeowners were urged to negotiate with the developer to try to work out a reasonable compromise. The resulting agreement had twelve conditions. It provided that the homeowners would support the two hundred fifty Marriott timeshares. It also provided for a number of other things, including that the SubHOA would not be subject to assessment or common expenses of the Master Homeowners Association (MasterHOA) in excess of thirty percent. Much of the agreement had been performed. He said the homeowners had certainly performed and were continuing to perform their part. They did not oppose the time extension. However, they wanted the Mayor and Council to be aware of the situation they were finding themselves in as a result of the agreement.

Mr. Weatherspoon said when they heard about the request for the time extension, he contacted Mr. Ansley. Four representatives met with Mr. Ansley on Saturday morning. It was a brief meeting during which Mr. Ansley announced that there was no agreement and that if they continued to disagree, the homeowners could file a lawsuit. He said that they were not there to argue the case before the Mayor and Council and have them act as an arbitrator. He said his point was that there are many instances when the Mayor and Council requests residents, neighborhood associations or homeowner's associations to work with the developers to work out mutually acceptable arrangements. That was what they did. As a result of that agreement, they stepped forward and complied with their part to support the rezoning, they continue to support the rezoning. They believe they have an agreement and intend to abide by their part of the agreement. It was unfortunate when one side refused to perform or denied the existence of the agreement. Mayor and Council had asked them to negotiate, they did so in good faith, they made an agreement, one party had received the benefits of the agreement and the other party was left with a lawsuit. He thought that was an important public policy and a consideration that the Mayor and Council needed to be aware of. He did not have any suggestions to keep that from occurring, but it could create a situation that they believed was unfair and inconsistent with the original direction.

Mr. Weatherspoon emphasized they support the rezoning and had no objection to the extension. They would have to deal with their situation in an appropriate forum and did not suggest this was it. Mr. Weatherspoon just wanted the Mayor and Council to be aware of the situation. The homeowners had not only filed petitions against this, but when the agreement was reached it was sent out to all of the residents. It had not been unanimous to accept it; many still opposed the concept of timeshares at Starr Pass. There was a sufficient number, a majority who agreed to the arrangement. Only after those votes were taken, when everyone was heard, did the SubHOA representative and the developer sign the agreement. He called that grass roots public participation at its finest. He thought that those agreements, reached in good faith, should be honored and they should not be left in a position that they now found themselves in. He reiterated that they did not oppose the time extension and would deal with their situation in the fashion that was required.

Leonard Korot said he lived in Starr Pass and he was one of the four representatives who met with Mr. Ansley on Saturday morning. Mr. Korot is Vice President of the Starr Pass Neighborhood Association. He said he had not met with

Mr. Ansley before and he went to that meeting with the expectation that they would have a thoughtful and reasonable discussion on the issues. That expectation dissipated fairly rapidly when Mr. Ansley vehemently disavowed the agreement. He said Mr. Ansley spoke a few choice words to them and stomped out of the meeting. Mr. Korot found that to be in sharp contrast to their efforts in reaching an agreement with Mr. Moussa. It was a long and intense process, but a very collaborative one. He did not want to give up, so they were requesting a thirty-day continuance to see whether or not they could reconcile their differences with the developer.

Mr. Ansley, the applicant, said that there was an agreement. However, he said the people he met with and who had spoken that evening were representing the Starr Pass Area Association and he did not think they represented the Homeowners Associations within Starr Pass. He questioned their authority to represent the Starr Pass Homeowners Associations. He said he was President of the MasterHOA and they did not represent that association, nor did they represent the SubHOA of Tohono Ridge area where he lived. He was not sure whom they were representing or on what authority, but he was going to try to find out and hoped the Mayor and Council would do the same.

Mr. Ansley reiterated there was an agreement with the SubHOAs. He said they had lived up to their part of the agreement, as far as they could at that point in time. For instance, they had filed and platted Starr Pass Three, which sterilized seven acres or forty-two units of casitas they were going to build for timesharing. That related to about 4.2 million dollars that they gave up, he thought that was part of their agreement.

Mr. Ansley said he would be happy to meet with the representatives of the associations. The Starr Pass Area Association was not a party to the agreement, so there was no reason for him to meet with them. He said it was laid out so there were three resident members on the MasterHOA Board of Directors and they were to meet with the presidents of all the SubHOAs and bring back comments and direction. Then, they would vote at the Master HOA board meeting. In April of last year, Mr. Weatherspoon, who was a member of the of that three man committee for the MasterHOA, received the proposal letter that Mr. Ansely had given him regarding how the expenses would be dispersed and reduced to thirty percent over time. Mr. Ansley said he had not received any written response on that proposal. Mr. Weatherspoon was supposed to take it to the presidents of the SubHOAs, get comments and get back to Mr. Ansley. That had not happened. Mr. Ansley asserted that Mr. Weatherspoon had not even contacted all of the presidents of the SubHOAs. The whole issue of extension was a homeowner situation, not Starr Pass Area Association, where they could claim to represent all of Starr Pass HOAs. They did not as far as he could see. They did not represent the MasterHOA and at least one SubHOA. He suggested the Mayor and Council check into that.

Mr. Ansley said this was a hearing on zoning, not homeowners associations. He was willing to deal with the situation and come up with a solution to it. He said he was the only one who had proposed a solution to date. He had been available and waiting since April to hear comments and he had not received any. But since the extension had come up, it was odd that there was this debate and a decision had to be made. But frankly, even if he made a decision, he would need seventy-five percent of the

homeowners voting before he could change the Covenants, Conditions and Restrictions (CC&Rs). He had a fiduciary responsibility to the MasterHOA. He could not arbitrarily change things.

Mr. Ansley knew that the hotel was coming on line in January of the coming year. It was his intent to have them pay their share of the MasterHOA fees; there was no question about that. The whole objection when it came in front of the Mayor and Council in 1999 was the way that the timesharing had been marketed at Starr Pass was not appropriate. That was why they concluded the way to do it was to follow the Marriott's example of marketing to people who came to stay at the resort. Therefore, he had not been able to market the timeshares yet and he had not filed a plan yet, because he had to wait for the hotel to open. He would need about a year to market to enough people to get the first phase of the timesharing going. He did not see how the timesharing people could pay for any short falls in the MasterHOA fees.

Council Member Ibarra said it was clear that there were some issues still to be resolved between the neighborhood and the developer. He thought it would be best to continue this item for thirty day and to ask the developer and the neighborhood to try to work out some understanding so that when they get it back in thirty days they could make a decision. He understood that there might be issues that were outside of what was in front of them. However, it was imperative that both sides work together because they had to make a decision in thirty days regarding the time extension because the original authorization would expire in November.

It was moved by Council Member Ibarra, duly seconded, to continue this Public Hearing for approximately thirty days. Staff was directed to correct the conditions to consistently reflect two hundred fifty units and staff should send to the Ward 1 Office, the document that outlines the "greenways, open space, wildlife and protected corridors."

Council Member Ibarra responded to Council Member West's question that he hoped to be at all of the meetings himself. He planned on calling Mr. Ansley and talking to the neighborhood to see if they could hold the meetings at his office, a neutral site. He was sure they could come to an agreement because in 1999 it was a difficult zoning issue and they were able to hammer out an agreement.

Council Member West asked Council Member Ibarra to unravel the homeowner associations and who represents whom.

Mayor Pro Tempore Ronstadt said he had two issues. He asked Council Member Ibarra to mediate this issue. He said that he had been getting e-mails from different homeowner associations some supporting and some not supporting the time extension. They needed to get a true and correct story. There was some confusion as to who was official or had standing to make a statement representing the associations who did not. The second issue was the thirty days. That concerned him because the zoning would expire on November 8, 2004. If it moved forward, they needed a rock solid commitment, it could not be delayed further.

Council Member Ibarra said that he agreed. Everyone needed to understand that in thirty days they would be making a decision either way. He would not be asking for another continuance.

Mayor Pro Tempore Ronstadt asked for a roll call on the motion.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, and Scott;
Mayor Pro Tempore Ronstadt

Nay: None

Absent/Excused Council Member Leal and Mayor Walkup

Motion passed by a roll call vote of 5 to 0.

10. ZONING: (C9-03-24) ABRAMS/ACEDO – FOURTH STREET, R-1 AND R-2 TO R-2, CITY MANAGER’S REPORT (CONTINUED FROM MEETING OF AUGUST 2, 2004)

Kathleen S. Detrick, City Clerk, stated they had received a written request from the applicant to continue this item for thirty days.

Mayor Pro Tempore Ronstadt announced that City Manager’s communication number 534, dated October 4, 2004, would be received into and made a part of the record.

It was moved by Council Member West, duly seconded, and carried by a voice vote of 5 to 0 (Mayor Walkup and Council Member Leal absent/excused), to continue the public hearing for approximately thirty days.

11. ZONING: (C9-04-15) DOS RIOS – ALVERNON WAY C-2 AND I-1 TO R-2, CITY MANAGER’S REPORT

Mayor Pro Tempore Ronstadt announced that City Manager’s communication number 547, dated October 4, 2004, would be received into and made a part of the record. This was a request to rezone property located on the southeast corner of Benson Highway and Alvernon Way. The preliminary development plan was for one hundred and forty-three single-family residences and future development of approximately seventy-three units. The Zoning Examiner and the City Manager recommend approval subject to certain conditions. Mayor Pro Tempore Ronstadt asked if the applicant or a representative was present.

Walki Retzar, representing Castro Engineering and Richmond American Homes, responded to Mayor Pro Tempore Ronstadt that they agreed with the conditions except

Condition 8 which did not apply to this rezoning case. She indicated that they had discussed that with staff.

Ernie Duarte, Development Services Director stated that Condition 8 spoke to the commercial portion of the project that was no longer part of the proposal and the condition was no longer applicable. They were amiable to it being struck.

It was moved by Council Member Ibarra, duly seconded, and carried by a voice vote of 5 to 0 (Mayor Walkup and Council Member Leal absent/excused), to approve the request for rezoning as recommended by the Zoning Examiner and with the elimination of Condition 8.

12. TUCSON CODE: AMENDING (CHAPTER 8) RELATING TO THE CITY MAGISTRATE APPOINTMENT PROCESS

Mayor Pro Tempore Ronstadt announced that City Manager's communication number 546, dated October 4, 2004, would be received into and made a part of the record. He announced that staff would be making a brief presentation.

Marie Nemerguth, Assistant to the City Manager, said this item was on the regular agenda because it was discussed at the Study Session in March with recommendations from the Good Government Subcommittee. The direction at the March Study Session was to approve the recommendations from the Good Government Subcommittee with a few minor revisions. As requested, staff presented this to the Magistrate Merit Selection Commission at their June meeting. The Commission did have a concern with one of the recommendations as was noted in a memo signed by Richard Dunbar, acting chair. The ordinance presented reflects what was brought to the Council in March with a few revisions. It does not reflect anything the Merit Selection Commission had a concern with, which was a law enforcement officer being a member of the Merit Selection Commission.

James Keene, City Manager, asked if this ordinance included the recommendations made by the Merit Selection Commission.

Mike Rankin, City Attorney, replied that the recommendation concerning the law enforcement officer being eligible even if they were currently a City of Tucson employee was included in the language of the ordinance presented.

In response to Mayor Pro Tempore Ronstadt, Mr. Rankin stated the specific language was on the first page of Ordinance 10051 in Section 8-2.1 the last full sentence on the page "Notwithstanding the provision of Tucson Code Section 10A-134(f) the law enforcement member may be a current City employee."

Council Member West said that did not reflect the recommendation from the Merit Selection Commission. As she understood, they recommended that the wording of the ordinance reflect there be only one member of law enforcement on the Commission and that the law enforcement member not be a current City employee.

Mr. Keene said that the Council needed to make a decision and direct the City Attorney to change the language as necessary.

Mr. Rankin stated the ordinance presented reflected the recommendation of the Good Government Subcommittee, not the Magistrate Merit Selection Commission. There were two different recommendations and they had to choose which one to put in the ordinance. If they adopted the language presented, the law enforcement position would be available to a current City employee. If that is not what they choose to adopt they could make a change that night, they would not have to come back to do it.

Mr. Rankin confirmed Council Member Dunbar's statement that the language in front of them would allow a current City Police Officer.

Council Member Dunbar said since she had been on the Commission, the Tucson Police Department had asked for one seat to be law enforcement. She was asking the Council to think through this because the Tucson Police Department had supported most of them in their campaigns. She said she took exception to the City Manager's recommendation that if it was a Tucson Police Officer he would be the one to appoint that member. Tucson Police Department has over five thousand officers, the concern from the Commission was that it should not be someone practicing in City Court. She thought that the Mayor and Council could look at the applicants, just like the lay people they put on the Commission. They could select people who could be fair and impartial. She wanted to point out that the Commission is made up of attorneys, it was the attorneys who do not want a law enforcement officer. She asked why it was okay to have an attorney who practices in City Court, and that did happen. She said the Tucson Police Department had asked, back when she sat on the Commission, to have one seat. That would be one member out of a nine member Commission. She did not see any problem with that. She hoped that they could support the ordinance as written. They could make the decision, if they thought that someone could not be fair and impartial, then they would not appoint them.

Council Member West said she wanted to ask the Good Government Subcommittee why they needed a police officer. She thought that it was a huge conflict of interest. She was not so sure they need all the Bar Association appointments either. It seemed to her that a group of citizens could do a whole lot better job, from an impartial standpoint. She thought that a police officer would be fair and impartial in so far as they could, but it was the perception of the public.

Mayor Pro Tempore Ronstadt said that as a member of the subcommittee he would answer the question. He said the reality was that there are members of the Bar Association who practice in front of the magistrates and that was problematic because there was the perception of conflict or of self-interest. He said that he concurred with Council Member Dunbar's assessment that it was important to have law enforcement on the Commission.

Council Member Dunbar said when she sat on the Commission it was not so much appointments, but reappointments, because who knew better how police were

handled when they were before the judges. They had a judge who, when police officers came before them, would be rude to them, he would dismiss them, he would fine with cans of food for the food bank, he would totally ignore domestic violence cases. You had the officers, who were in the trenches, who were working to bring these people forward, and then many times there were judges who would just discount it. That was the kind of information that Mayor and Council needed to see when judges came up for evaluation later. They were just asking for one out of nine Commissioners. Right now they did have one law enforcement officer on the Commission and she had not heard any complaint from the public concerning a law enforcement officer or attorney.

Council Member Scott said that she had noticed in the Ordinance under Section 8-2.1 that if the law enforcement officer was a current City employee, they would be appointed by the City Manager. She asked if this was a recommendation from the Good Government Subcommittee.

Council Member Dunbar responded no.

Council Member Scott wondered if it would be appropriate to ask the Mayor and Council to consider rewording or removing that section. She asked how this person would be appointed or brought to the Commission if the City Manager did not appoint them.

Mr. Keene stated that the language read that they would be recommended for appointment by the City Manager. The City Manager would not make the appointment, but would make a recommendation for appointment. He said that he thought the rational was that they would be asking a current City employee to serve in that capacity, they would be asked because they were a City employee. Under our form of government there is a separation between personnel management and the policy making of the Council. That provides an adequate buffer for the City Manager, since technically all of the staff report through the City Manager. That does not prevent him from forwarding a number of people for consideration. He thought that our Charter and our form of government were connected to this recommendation. He also thought that it buffered the Council a little bit from politics that may or may not arise.

Council Member Scott asked if there were other members of this Commission who were appointed by the City Manager's Office.

Mr. Keene reiterated that the City Manager only makes recommendations for appointment, but they were dealing with the appointment of somebody due to their capacity as a City employee. Under the form of government that we have, City employees report ultimately to the City Manager, so it would be under the Manager's purview to make the recommendations to these bodies in order to maintain an appropriate distance and separation.

Mr. Keene responded to Council Member Scott's question by stating that none of the other members on this body are City employees so the Manager would not make any other recommendations for appointment.

Council Member Scott asked Judge Riojas what the consensus was among the judges on this issue.

Judge Riojas stated there was a pretty strong consensus against this provision for a couple of reasons. First, if there was an active Tucson Police Officer on the commission and that officer had supervisory authority over any officer that appears in City Court, pursuant to judicial ethics rules, a judge would not be able to rule on any cases. So if you get an officer who is in a command position and three or four magistrates come up at the same time you would virtually cripple the bench. They would have to disqualify themselves from any cases where the officer appears or where their subordinate officers appear. There is an ethics opinion that deals with a situation similar to this involving a prosecutor and their spouse appearing in court. An active Tucson Police Officer could cause some real problems.

Judge Riojas said that he took it further and recommended against having any law enforcement or a position saved for law enforcement because before long there would be other interests wanting to be represented. Why not a defendant. Why not someone representing victims. This was supposed to be a nonpartisan committee. The judges were supposed to be impartial, not favorable to any side. He thought that when you started putting a member of one party in there, one group, it removed the impartiality. He said there were defense attorneys on the Merit Selection Commission, but there was a recent ethics opinion that said any attorney who regularly practices in City Court cannot be on the Magistrate Merit Selection Commission, it is called the Royalston Rule. An ethics opinion was obtained because there was a former member of the Commission who appeared in City Court constantly. Now no one on the Commission should appear in City Court on a regular basis. There are only two Commission members who he had ever seen in City Court and that was very infrequently and if they happened to have a case that involved a judge, then either they or the judge would recuse themselves. He thought maybe they needed to ask the Bar to be a little more stringent in their appointment of attorneys to that Commission. The bench thought having a position reserved specifically for law enforcement would get rid of impartiality. They were supposed to be the ones making the decisions and they should not be influenced by anything. If they start putting law enforcement on the Commission, their job would be dependent on one member of the Commission who was law enforcement. How would that look to the public. If the job of someone who was deciding a person's innocence or guilt was dependent on someone who was on the Commission as law enforcement, how would that appear.

Council Member Scott asked if that applied across the board, whether they were current or retired from their law enforcement duties. Judge Riojas replied it would appear strongly if the person was active law enforcement. If they were retired there would still be an aura of impartiality.

Mayor Pro Tempore Ronstadt stated that it was very interesting to him that the lawyers had figured out a way to get lawyers on the board, but kept everybody else off.

Mr. Rankin affirmed Mayor Pro Tempore Ronstadt's question that the City Manager would make a recommendation and Mayor and Council would make the appointment.

Mayor Pro Tempore Ronstadt asked if there were other commissions where the City Manager would make a recommendation and then the Council would vote on the appointment.

Kathleen S. Detrick, City Clerk, stated that there were other commissions where the City Manager would make a recommendation and then the Mayor and Council would appoint.

Mr. Rankin confirmed Mayor Pro Tempore Ronstadt's statement that it would not be unique to this commission to have that two step process where the City Manager would make the recommendation and Council would approve it.

Mayor Pro Tempore Ronstadt asked, if the Council wanted to go forward on this ordinance as it was written, recognizing the Charter issues and being a City employee, would it be appropriate for the labor representative of the police officers to work with the Manager to make the recommendation.

Mr. Rankin said that he could not envision how that would work if they could not come to a consensus on the recommendation. He wondered who would be making the recommendation in that situation. As a practical matter, one person needed to be responsible for making the recommendation.

Judge Riojas responded to Council Member Ibarra's question by stating if they were a non-active Tucson Police Officer the issue of conflict of interest would go away. Judges would not have to recuse themselves. They only occasionally see sheriffs or once in a great while, Department of Public Safety personnel. There would still be, in his opinion, an appearance of not being fair by having a law enforcement officer on the Commission but having a retired officer or some law enforcement outside of Tucson Police would get rid of the conflict of interest issue.

Council Member Scott asked if Federal, State, County and City law enforcement agencies would also fall into this category.

Judge Riojas replied that they would, but the only officers outside of Tucson Police who appear regularly in front of City Court were Pima County Animal Control Officers.

Council Member Scott stated that because of the issues that were unresolved, she was uncomfortable making a decision that evening. She did not know where to send it since Good Government had already dealt with it. She was concerned because there was not unanimity, which she thought was consensus building, but she did not know where to send it. She did not believe it was ready and that when you vote up and down on something that was not finished and was not ready, it was wrong. She thought that when

you rush on something that was not a good document that you end up with something that potentially would not serve the community.

Council Member Dunbar said they could keep sending it to people forever. What they had before them were people who could not come to an agreement. It had gone through the committees and they had the note from the Vice Chair of the Merit Selection Commission. She thought that they should take what they had and either vote it up or down.

Council Member Dunbar also wanted to point out that their offices were getting phone calls because they were trying to appoint a limited special magistrate. They started working on that over a year ago, it went back to the Merit Selection Commission and they wrote their letter on July 8, 2004. The people calling their offices were going through the old process. City staff did not include limited special magistrates as a part of the language, so all of the work that was being done was still not right. They have been working on it for over a year, but they were still using the old system. She said it was a matter of opinion on whether or not you wanted law enforcement.

Council Member Scott said it was not just whether or not you wanted law enforcement on the Commission. They had the City Magistrate Merit Selection Commission making one statement, Mr. Keene making another statement that was at variance with the first and Judge Riojas was saying he was not happy with how it was working out. If that did not tell them that it was not ready, she did not know what would. She said that she did not mean to demean the work of the Good Government subcommittee, she thought they did heroic work to even attack it. But when they had at least three, if not more, different opinions on how to move forward, it was not ready.

Council Member Dunbar said they do not have three different opinions, what they had were attorneys who did not think they should have law enforcement. She said they had to remember they had a commission made up of attorneys and lay people. Judge Riojas was a judge in City Court. The judges and attorneys had one opinion and the lay people had another.

Council Member Scott said they were the ones in charge and there were other people on the Commission. She considered it to be one group's position. They had Mr. Keene's position, they had the Tucson Police Department's position, the judge's position. She wished that they had come to a consensus on it. She was not even taking a position at that point. She hoped that they could massage it a little further to make it a healthier document, then she would feel much better. She did not know how they could do it except perhaps to take it to another committee or create a citizen's committee.

Mayor Pro Tempore Ronstadt said his perspective was that there were some issues that they would just not get a consensus on. No matter how many committees they wanted to create and send them to, they would not get a consensus. That was why they were elected, to be final decision-makers and show some leadership. If they could not get consensus from groups that they asked questions of, then they had to use their best judgement and make a decision, that was what leadership was. He said that they did not

have all seven of them present that evening and that it was an important issue. He knew that Council Member Dunbar wanted to dispose of it that evening, but in fairness to Council Member Leal and the Mayor they may want to wait until they had a full Council.

It was moved by Council Member Scott, duly seconded, to postpone this item until there was a full Council ready to address the issue.

Mr. Rankin said that Council Member Dunbar had brought up that the limited specials were not part of this ordinance. He asked if it was part of the motion for staff to come back with information on the limited special magistrates as well.

Council Member Scott responded that she would like that and it would be helpful. She would like any and all possible information included.

Council Member West said that she agreed with much of what Council Member Dunbar had said. She said that they had worked on it for a long time and that the Council had hassled over it at the last meeting they had. Her only hang-up was that she did not feel it should be a current City Police Officer. If it were a retired officer, a Sheriff's deputy, a highway patrol officer or something like that, she would be fine with it. The other concern that she had was the fact that the ball was continuing to roll while they deliberate and deliberate. They had the special limited magistrates coming forward. Also, they just recently had a magistrate come forward and there was absolutely no information on that person's performance. They would have others like that. She thought that the Good Government Subcommittee had done a good job, but she had a difference of opinion on having a current police officer doing it. She thought that it was in the Charter that City employees were not to be included that way. It would present dilemmas for the court. She had police officers weigh in when they were reappointing magistrates and tell her about situations like Council Member Dunbar had described. She thought they would want to remain anonymous. She appreciated their calls and would never give them away or name them as someone who had spoken about a particular magistrate.

Council Member West said that she would support the motion but she did not want it to drag on forever. The subcommittee had done their job but she thought tweaking it to include the Merit Selection Commission recommendations would make her feel more comfortable. She thought that it would get rid of the City Manager having to be in the position of having to come up with somebody. She did not like the feeling of that.

Council Member Dunbar said that she thought it should be voted on that evening. She wanted to point out that the language in the ordinance said that only one member should be a member of law enforcement, it did not have to be a Tucson Police Officer. She said that it would be the Council who would appoint the member. By delaying it, they would be accomplishing nothing other than to include the two people who could have added to the conversation.

A substitute motion was made by Council Member Dunbar to pass and adopt Ordinance 10051.

Mayor Pro Tempore Ronstadt said he would like to second it, but could not.

Mr. Rankin confirmed Council Member Scott's statement that when the ordinance said "law enforcement" it covered Federal, State, City and County.

Mr. Keene said the motion was dealing with postponing it until the full Council was back. The City Attorney would make sure that when it came back it would include language dealing with the limited special magistrates. Mr. Keene said that his recommendation was not inconsistent with the recommendation of the Merit Selection Commission. If the Council wanted to exclude a current City employee, his role would be completely taken out. It was only if they were including a City employee that the City Manager's role would be triggered. He said he had no interest or desire to be the one making the appointment. He would be fine if they chose to recommend that the one member of law enforcement not be a current Tucson Police Department employee.

Council Member West seconded Council Member Dunbar's substitute motion. She said they had belabored it long enough.

Mayor Pro Tempore Ronstadt asked if they needed four affirmative votes or just the majority present to pass a motion.

Mr. Rankin stated they would need four votes and that Mayor Pro Tempore Ronstadt's vote would count. He also said, as a point of clarification on the substitute motion, since they had moved the ordinance be adopted as written, that it would include the language about the recommendation from the City Manager if the member was a current City employee.

Council Member Ibarra clarified that the substitute motion was to go forward that evening with the ordinance as it was written and the original motion, made by Council Member Scott, was to continue until the full body was present. He asked what would happen if there was not four affirmative votes on either motion.

Mr. Rankin replied if neither motion received four affirmative votes that no ordinance would be approved or adopted and the Council would need to give direction as to what they would like brought back or not brought back.

Council Member Ibarra said he had seconded Council Member Scott's, motion because he thought that it was the most appropriate motion. Council Member Ibarra thought there was a minor glitch in the ordinance and he was willing to wait for his two colleagues to come back. He stated that he would be voting against the substitute motion and would be supporting the original motion. However, he did not think there would be four votes for either motion.

Mayor Pro Tempore Ronstadt asked the City Clerk to read Ordinance 10051 by number and title only.

Ordinance 10051 relating to City Court; amending the Tucson Code, Chapter VIII, Article 1, Section 8-2.1 Methods of appointment of magistrates and qualifications establishing senior special magistrate status and compensation; Section 8-4 Magistrates; powers and duties; Section 8-4.1 Authorizing assignment of an associate presiding magistrate, term, compensation; and declaring an emergency.

Ms. Detrick clarified that the substitute motion was to pass and adopt Ordinance 10051 as presented.

Mayor Pro Tempore Ronstadt asked for a roll call vote on the substitute motion.

Upon roll call, the results were:

Aye: Council Members West, and Dunbar;
Mayor Pro Tempore Ronstadt

Nay: Council Members Ibarra and Scott

Absent/Excused: Council Member Leal and Mayor Walkup

Substitute motion failed by a roll call vote of 3 to 2.

Council Member Dunbar stated she would like to explain her vote. She wanted to point out this ordinance was exactly what Council Member Ibarra voted yes on in the Good Government Subcommittee.

Mayor Pro Tempore Ronstadt stated that the reality was that if the substitute motion did not pass it would come back to the full Council. He asked to pass the next motion out of respect for their colleagues.

Mayor Pro Tempore Ronstadt asked for a roll call the original motion.

Ms. Detrick reiterated that the original motion was to postpone the item for full Council and include the information regarding the limited special magistrates.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar and Scott;
Mayor Pro Tempore Ronstadt

Nay: None

Absent/Excused: Council Member Leal and Mayor Walkup

Motion passed by a roll call vote of 5 to 0.

Council Member Dunbar said that she wanted to point out that they were getting phone calls regarding the limited special magistrates and that they were not going

through this process. She thought they should hold up the whole process. She said that they have been working on it over a year and they should have pushed it through faster. She did not think they should be bringing new judges on with the old system when they agree on practically everything except one line, which has a glitch. She asked if she could move to put them on hold until the ordinances go through.

Mr. Rankin stated that the item was scheduled for October 18, 2004 and that the appropriate thing to do would be to move that item at the Agenda Committee meeting.

Judge Riojas stated that the limited special magistrates they were considering appointing were going through the old process. They had forgotten to change that position when they changed the process for the other magistrates. The limited special magistrate position was created when the budget was passed; it was a new position. They would be holding civil parking hearings and civil traffic hearings. To date, over the last two months, the number of parking citations had gone up over forty-five percent. If they decided to hold up the process it would put him in a logistical jam. There were two ways to solve it. He could delay all those hearings or he could try to find a special magistrate to cover. He wanted them to keep in mind that would cost nine hundred dollars a week if he could find someone willing and able to cover. This would affect not only parking hearings but also all civil ordinances including slum abatement (SABER) and red tag hearings.

Mr. Keene stated that was information for them to factor into their decision if they choose to hold it in abeyance to pass the ordinance with the limited special magistrates in it. He said it was certainly within their purview to direct that they go back and deal with the new appointment through the new process.

13. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

Mayor Pro Tempore Ronstadt announced that City Manager's communication number 538, dated October 4, 2004, would be received into and made a part of the record. He asked for a motion to approve the appointments in the report.

It was moved by Council Member Scott, duly seconded, and carried by a voice vote of 5 to 0, (Council Member Leal and Mayor Walkup absent/excused) to reappoint Stephen Bohn and John C. Roberts to the Sign Code Advisory and Appeals Board and Scott Douthitt to the Tucson Police and Fire Public Safety Personnel Retirement System Boards and appoint Lynn Cafiso to the Veterans' Affairs Committee.

Mayor Pro Tempore Ronstadt asked if there were any personal appointments. There were none.

14. ADJOURNMENT: 7:05 p.m.

Mayor Pro Tempore Ronstadt announced that the Council would stand adjourned until its next regularly scheduled meeting to be held Monday, October 11, 2004 at 5:30 p.m., in the Mayor and Council Chambers, City Hall, 255 W. Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 4th day of October 2004, and do hereby certify that it was an accurate transcription

DEPUTY CITY CLERK

KSD:cf/jk